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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re CAMERON W., a Person
Coming Under the Juvenile
Court Law.

B289135
(Los Angeles County
Super. Ct. No.
17CCJP02259A)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and
Respondent,

v.

TIFFANY W.,

Defendant and
Appellant.

APPEAL from an order of the Superior Court of Los
Angeles County, Robert S. Draper, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Aileen Wong, Senior Deputy County Counsel, for Plaintiff and Respondent.

Tiffany W. (mother) appeals from an order removing her son, Cameron W., from her custody under Welfare and Institutions Code section 361, subdivision (c)(1).¹ The case was initiated when the Los Angeles County Department of Children and Family Services (Department) detained Cameron on the day that mother was initially detained on suspicion of shoplifting and later arrested for trespassing at a Trader Joe's store in Pasadena. Mother's behavior raised concerns about possible mental illness. Cameron was released to his presumed father, R.M. (father), and remains in father's custody. After sustaining the jurisdictional allegations in the petition filed by the Department, the court found clear and convincing evidence that it would be detrimental to Cameron's safety and protection for him to be returned to mother's custody, and that the Department made reasonable efforts to prevent removal. Mother contends the removal order is not supported by substantial evidence. We affirm the removal order.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

FACTUAL AND PROCEDURAL BACKGROUND

Mother is 39 years old and resides in a supportive affordable housing complex called Marv's Place in Pasadena. Mother has two children with different fathers. Her daughter, K.W., was born in June 2011, and is not part of the current case. Cameron was born December 30, 2015. In our summary of the pertinent events leading up to the jurisdiction and disposition hearings, we “draw all reasonable inferences from the evidence to support the findings and orders of the [juvenile] court” and “review the record in the light most favorable to the court’s determinations.” (*In re R.T.* (2017) 3 Cal.5th 622, 633; accord, *In re I.J.* (2013) 56 Cal.4th 766, 773.)

Dependency and family law cases involving K.W.

K.W. tested positive for cocaine at birth in June 2011, leading to a dependency case that ended in November 2012 with a family law custody order giving mother and D.M. (K.W.’s father) joint custody, with K.W. primarily living with mother. A second dependency case began in June 2014 with a petition alleging that mother was unable to provide regular care to K.W. and “demonstrated mental and emotional problems including, paranoia, auditory and visual hallucinations.” The second case concluded in March 2015, with the court dismissing the petition and releasing K.W. to parents. As part of the second dependency case, a psychologist conducted a forensic psychological exam of mother, observing that while mother did not exhibit psychotic symptoms, “She does have a history of pronounced trauma, suffering an aggravated rape when she was just fifteen, as well

as a history of child molestation.” Suggesting ways of managing mother’s anxiety and hypervigilance, presumably caused by PTSD from her past trauma, the therapist recommended “that [m]other have a regular therapeutic support person with whom she can work to manage anxiety, develop better insight about her abrasive impact on others, and employ to improve her judgment.”

In October 2016, a family law order granted sole custody of K.W. to father, who was living in Georgia. The order included a finding that the court had concerns about mother’s ability to share decision-making authority. The court ordered all communications between mother and father to be through an application called “Our Family Wizard,” with both parents checking the application every 24 hours and responding to any message within 24 hours. Mother was to have monthly monitored visits, alternating between Georgia and California, with mother paying travel expenses to Georgia, and father paying travel expenses for California visits. The court ordered mother to drug test, enroll in and attend Alcoholic Anonymous or Narcotics Anonymous meetings for at least one year, and participate in at least one year of individual counseling to address substance abuse issues.

During the Department’s investigation in the current case, D.M. reported that mother had not visited the child in Georgia, and her last visits in California were in December 2016 and May 2017. According to D.M., mother’s visits ended because maternal grandmother and maternal aunt refused to monitor due to mother’s erratic behavior and abusive language.

Mother’s relationship with her mother and her siblings

Mother declined to provide her family history to the social worker, even declining to provide her mother's name. Mother did share that she attended UCLA for four years, taking her most recent class in 2003. Mother stated she was 16 credits short of a degree, but was prevented from finishing because she owed the university money. She later worked as a production coordinator in entertainment. Mother denied any history or diagnosis of mental illness.

Maternal grandmother was critical, stating mother could fly into a rage in a heartbeat and describing mother as generally unlikable and difficult to get along with. According to maternal grandmother, mother has a history of paranoia; she is manipulative and can be verbally aggressive when she is angry. She became isolated after her daughter was born and always blames others for her problems. Mother felt that maternal grandmother favored maternal aunt K.B. over her, and believed maternal grandmother was biased because father had shared the Department's report with her.

Maternal aunt K.B. testified at the jurisdictional hearing. She believed mother had a substance abuse problem because she would talk about pills and drugs she was taking while a production assistant on set, and because mother tested positive for cocaine at K.W.'s birth. She had been offering to help mother for the past ten years, but mother was not cooperative. Maternal aunt had cared for K.W. to avoid having the child put into foster care, but she stopped monitoring mother's visits because mother would negotiate with her to have increased and unmonitored time with K.W., and to hide that information from the Department. Mother also would raise suspicions with the social worker when maternal aunt would have other people over at her

home, leading to inquiries about whether maternal aunt was serving alcohol at parties, or allowing unauthorized people to have contact with K.W. Maternal aunt rarely had contact with mother in recent years, mostly on birthdays and Christmas. She recounted that mother had an outburst after drinking at the sister's home last Christmas, and there had been other incidents where mother would become adversarial seemingly without warning. Answering a question about whether she thought Cameron was safe in mother's care, maternal aunt admitted to lying to mother and mother's attorney earlier in order to avoid creating a scene. She then answered that she did not feel Cameron was safe in mother's care because mother was still drinking and behaving erratically and that was not safe for a young child.

Cameron's birth and early dependency referrals

During the Department's investigation in the current case, mother refused to provide any information about complications surrounding the birth of either of her children. According to father, Cameron was born nearly two months premature by emergency cesarean section.

A domestic violence incident in January 2016 led to a referral to the Department regarding allegations of emotional abuse and general neglect of Cameron. The perpetrator had punched mother in the eye and mother sought treatment at the hospital. Mother reported the incident to the police after heavy persuasion from hospital staff. The matter was closed after mother moved to Riverside County.

Another referral was opened after mother was reportedly intoxicated at a family party in May 2016, broke curfew at her transitional residential facility, and tested positive for opiates the next day. The referral was closed as inconclusive.

Mother began living at Marv's Place when it opened in October 2016. The site coordinator, Lori Nipper, stated that mother had become more reclusive and isolated beginning November 2016. In January 2017, mother was videotaped screaming at children and adults in the complex. According to mother, children around the age of five or six were cursing at her, and their parents were drug users. Two referrals were generated in late May 2017, after mother was reportedly yelling and cursing at children in her complex, and accusing other tenants of selling and using drugs. The reporting party expressed concern that mother frequently yelled and cursed at one-year-old Cameron, calling him a "fucking idiot" and a "fucking stupid-ass." When police officers responded, mother refused to answer questions. A Pasadena police officer contacted the Department of Mental Health and was informed mother was diagnosed with Posttraumatic Stress Disorder in 2016, Delusional Disorder in 2014, and General Anxiety Disorder in 2011. The referrals were evaluated out and closed as inconclusive.

Mother's arrest and Cameron's detention

On the afternoon of December 2, 2017, Pasadena police received a call from a Trader Joe's store, reporting that mother had shoplifted. When police arrived, mother was outside the store with Cameron. The police detained mother and confirmed with store employees that mother had left the store without

paying for items. Police and store employees removed the store's items from the cart and the stroller, which also contained bags and items the store did not carry. The store manager declined to press charges, but stated to mother in front of the police that mother was no longer welcome at the store and if she returned, she would be trespassing and store employees would call the police. Mother was still handcuffed as she exchanged words with some of the police officers about a variety of topics, including whether mother had to provide her birthdate, whether it was mail fraud for the police to open an envelope with mother's name on it, whether the police would call the Department, whether the store had the right to kick mother out of the store, and mother's conduct earlier at a different store. After the officers removed mother's handcuffs and told her to take her stuff and leave, mother grew increasingly agitated, screaming obscenities at the officers repeatedly. At one point, as mother was yelling, one of the officers referred to 5150, the Welfare and Institutions Code section authorizing a psychiatric hold on someone who is a danger to himself or to others. Mother continued: "You can't do shit to me. You're being investigated. [¶] . . . [¶] And I have a bunch of androids in my fucking -- yeah, get the fuck out of here. Get the fuck out of here, you fucking city bitch ass PD." Body camera video shows that following her angry outburst, Cameron ran away from mother, who was standing by a wall near the stairwell, into the parking lot. A security guard stopped Cameron a matter of feet before the child would have run into the path of moving cars. Mother then walked towards the security guard, yelling, "Don't touch my son."

The police left the scene, but they were called back to the store less than an hour later, because mother had returned and

taken the same items. The officers arrested mother for trespassing and took her to the Pasadena city jail to be booked. The police contacted the Department, and the Department dispatched a social worker to the jail. Mother initially refused to provide father's name and contact information to the officers, but eventually provided it to jail staff. Father arrived at the police station and answered questions from the police and the social worker about his relationship with mother and Cameron. Father noted that while mother provides good care to Cameron, he believed she suffered from "episodes" where she would act out.

Mother refused to answer any questions about her mental health history, her personal contact information, or anything about her ability to care for Cameron, telling the social worker his questions were "irrelevant." She was uncooperative, erratic, and appeared to the social worker to have a mental illness. Mother continually demanded that her son be returned to her, and she refused to cooperate when the social worker offered an Up Front Assessment. When the social worker asked mother about K.W., mother became angry and loudly repeated, "you have no right to ask me about my daughter." She did say her last visit with K.W. was sometime in May 2017.

On December 5, 2017, the Department filed a petition with two counts against mother. The first count (b-1) alleged that mother's shoplifting and arrest in Cameron's presence placed Cameron in a detrimental and endangering situation. The second count (b-2) stated that mother "demonstrates mental and emotional instability, including erratic behaviors and the mother has a history of mental and emotional problems including a diagnosis of Post-Traumatic Stress Disorder," placing Cameron at risk of serious harm. The court conducted a detention hearing,

found a prima facie case for detaining Cameron from mother, and ordered Cameron released to father under the Department's supervision. The court ordered monitored visits for mother and authorized father to monitor mother's visits.

Jurisdiction and disposition report

The Department's jurisdiction and disposition report included summaries of interviews with mother, father, father's girlfriend, maternal grandmother, maternal aunt, and Lori Nipper, the site coordinator at Marv's Place. The Department's report also summarized the police reports of mother's arrest. Copies of the police report, the family law order governing custody of K.W., and the 2014 forensic psychological examination report were attached to the Department's report.

During mother's interview, mother declined to answer many questions, and it was difficult to obtain a thorough history for mother. During father's interview, he expressed concern about Cameron's safety. He noted that he has seen mother verbally attack total strangers for no apparent reason. She once punched him in the side of the head and accused him of talking with the voices in the radio and conspiring against her. He is fearful the "she might think Cameron is hurting or planning to hurt her and will turn aggressive towards him since she can't control the voices in her head." Father also refused to monitor mother's visits after mother "lost it" when he refused to violate court orders and permit an unmonitored visit over Christmas.

Jurisdiction and disposition hearings

The jurisdictional hearing took place over multiple dates in January, February, and March 2018, ending with the court sustaining the petition allegations. The court entered into evidence the Department reports, two DVDs containing bodycam videos of mother's detention and arrest on December 2, 2017, a transcript of the bodycam videos, and last minute information reports, one of which included a January 24, 2018 letter from mother's counselor at Door of Hope.

The court heard testimony from mother, father, and a number of other witnesses. During the testimony of Naomi Winkler, a Pasadena police officer who was present during mother's arrest, Mother interrupted periodically. At one point the court admonished mother that if she interrupted again, she would be removed from the courtroom. After considering the testimony, evidence, and argument from all parties, the court sustained the petition allegations.

Father presented additional testimony for the disposition hearing. During argument for disposition, the Department asked the court to remove Cameron from mother's custody and end the case with a family law custody order giving father custody and mother monitored visitation. Acknowledging that the court also had discretion under section 361.2 to provide reunification services, the Department proposed that the court order a psychological and psychiatric evaluation, including evaluating mother's willingness to take medications. The Department also suggested random and on-demand drug testing and continued visitation. Minor's counsel² argued that based on the existing

² The transcript identifies the speaker as mother's counsel, but the substance (and the fact that mother's counsel makes a

bond between mother and Cameron, mother should be given the chance to maintain that bond and regain custody. Therefore, an order for psychological assessments, mental health services, visitation, and drug testing based on reasonable suspicion would be warranted. Father's counsel argued because father offered a safe environment, it was within the court's discretion to terminate jurisdiction and give custody to father. Because the court's focus should remain on what is best for Cameron, not what is best for father or mother, granting custody to father would provide Cameron with stability. Mother's counsel argued there was not clear and convincing evidence to support removal, because mother had already been in individual therapy, and has tested clean for drugs for over a year and a half. Without evidence that the events of December 2, 2017 were likely to recur, mother argued there was insufficient evidence to support removal. Regarding services, mother asked for the psychological evaluation to be done by the same psychologist who had prepared the assessment in the earlier dependency case concerning K.W. Mother also argued that if the court was inclined to remove Cameron from mother's custody, unmonitored visitation was warranted.

The court found there was clear and convincing evidence that it was necessary to remove Cameron from mother's custody. It ordered mother to undergo psychological and psychiatric evaluation, to continue individual counseling, and to sign a release to permit the Department to evaluate the counseling. It granted mother monitored visitation. Mother filed a notice of appeal.

separate argument later) leads us to conclude that the speaker was mistakenly identified in the reporters' transcript.

DISCUSSION

Mother does not challenge the evidentiary support for the court's jurisdictional finding that Cameron was a minor described by section 300, subdivision (b)(1). Instead, her appeal focuses solely on whether there was evidence sufficient to support the court's order removing Cameron from her custody.

“[W]e review both the jurisdictional and dispositional orders for substantial evidence. [Citation.] In doing so, we view the record in the light most favorable to the juvenile court's determinations, drawing all reasonable inferences from the evidence to support the juvenile court's findings and orders. Issues of fact and credibility are the province of the juvenile court and we neither reweigh the evidence nor exercise our independent judgment. [Citation.] But substantial evidence ‘is not synonymous with any evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] . . . “The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.” [Citation.]’ [Citation.]” (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 992.)

The decision to remove a child from parental custody is only authorized when a dependency court finds, by clear and convincing evidence, that “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's [or] guardian's . . . physical custody.” (§ 361, subd. (c)(1).) “A removal order is proper if it is based on

proof of (1) parental inability to provide proper care for the minor and (2) potential detriment to the minor if he or she remains with the parent.” (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1163 [“focus of the statute is on averting harm to the child”].)

“The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus . . . is on averting harm to the child. [Citation.]’ [Citations.]” (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969.) “The court may consider a parent’s past conduct as well as present circumstances.” (*In re N.M.* (2011) 197 Cal.App.4th 159, 170.) “[C]ourts have recognized that less drastic alternatives to removal may be available in a given case including returning a minor to parental custody under stringent conditions of supervision by the agency such as unannounced visits.” (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 148.)

“The clear and convincing standard was adopted to guide the trial court; it is not a standard for appellate review. [Citation.] The substantial evidence rule applies no matter what the standard of proof at trial.” (*In re E.B.* (2010) 184 Cal.App.4th 568, 578; see also *In re Alexander C.* (2017) 18 Cal.App.5th 438, 451 [substantial evidence review applies on appeal, even for issues the trial court decides on clear and convincing evidence].)

Mother acknowledges on appeal that the record demonstrates she had some unfortunate and negative interactions with adults. She insists, however, that the record does not support the court’s finding that Cameron was at such a risk of harm that it was necessary to remove him from her custody in order to protect him from harm. Mother argues that hers is not one of the extreme cases of parental abuse or neglect that would justify removing a child from the parent’s custody,

citing to *In re Jasmine G.* (2000) 82 Cal.App.4th 282 (*Jasmine G.*), where an appellate court reversed the lower court's order removing a 15-year-old girl from parental custody who was adjudicated a dependent due to excessive physical discipline. (*Id.* at pp. 288–292.) In *Jasmine G.*, the social worker believed the child was at risk because the parents lacked a full understanding of adolescent issues, but the parents expressed remorse for their actions, attended services, and the child wanted to return home. (*Id.* at pp. 284–285.) The reviewing court found there was insufficient evidence to support the removal order. (*Id.* at pp. 285, 288–289.)

The case before us is entirely distinguishable, not only because Cameron is a much younger child (see, e.g., *In re D.B.* (2018) 26 Cal.App.5th 320, 332–333 [distinguishing *Jasmine G.* as inapplicable in evaluating risk to an 18-month-old child]), but because there is substantial evidence that mother remains unwilling or unable to recognize the extent to which her interactions with others have put Cameron's well-being at risk. Mother argues she was already engaged in services at the time Cameron was removed from her, pointing to the fact that she had reached her treatment goals in the context of individual counseling provided at a transitional housing program for survivors of domestic violence. The January 2018 letter mother relies upon simply confirms that after September 2016, mother “came once a month to check in and report progress on treatment goals.”

The case before us is more analogous to *In re Travis C.* (2017) 13 Cal.App.5th 1219, where evidence showed that mother had experienced psychotic episodes where she heard voices and believed she was being stalked, but she argued that jurisdiction

was not warranted because any risk of harm to the children was speculative. The appellate court rejected mother's argument, noting that where there was evidence that mother's illness and her failure to take medication had already placed the children at risk of harm, the social service agency's "inability to precisely predict how Mother's illness will harm [the children] does not defeat jurisdiction." (*Id.* at p. 1226.)

In making its removal order, the court had before it evidence that mother had a documented history of overreacting to situations in a manner that posed a risk to Cameron. Maternal grandmother described mother as manipulative, verbally aggressive, and inclined to blame others for her problems. Father, maternal aunt, and Nipper all expressed concern about Cameron's safety if he was to remain in mother's care. As father explained, although he knew mother cared well for Cameron, he was concerned that Cameron's safety would be in danger if mother were to become angry with him in the way she would sometimes unpredictably become angry and aggressive with total strangers.

Although mother had attended to Cameron's needs in terms of health, clothing and shelter, there was evidence of mother's tendency to escalate situations, rather than diffusing them, regardless of the impact on those around her. After moving in to Marv's Place, mother not only isolated herself and Cameron, but also was verbally aggressive with her neighbors. There was video evidence that almost immediately after mother had an angry outburst in the parking lot at Trader Joe's, Cameron ran away from her toward the path of moving cars, only to be stopped by a security guard. Mother continued her outburst, yelling at the security officer who had protected

Cameron. Rather than heeding the advice of officers and store employees to stay out of the store where she had been accused of shoplifting, she returned to the store, insisting that she could not be arrested for trespassing. Mother's defiant responses to the police, security guard, and the social worker also demonstrate that there is an ongoing risk to permitting Cameron to remain in her custody. Even though Cameron was well-groomed and well cared for, there was substantial evidence from which the lower court could infer that his health and safety was at risk unless he was removed from mother's custody.

DISPOSITION

The court's dispositional order removing Cameron from mother's custody is affirmed.

MOOR, J.

WE CONCUR:

RUBIN, P. J.

KIM, J.